

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

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TRUSTEES, MADISON COUNTY
SCHOOL DISTRICT NO. 7,

Appellants,

VS ■

HAZEL MARIE PHILLIPS,

Respondent .

* * * * *

STATEMENT OF THE CASE

Respondent, Hazel Marie Phillips (Phillips), was employed as a tenured teacher by the Appellant School District. On February 28, 1989, Kathleen Eaton, superintendent of the Twin Bridges School District, recommended that Phillips be terminated due to financial conditions of the school district. The recommendation letter followed action by the Board on February 3, 1989, eliminating the English/Art position which Phillips held.

On March 22, **1989**, the School Board held a hearing on the Superintendent's recommendation to terminate Phillips. After the hearing, the Board voted to accept the Superintendent's recommendation. Phillips subsequently appealed the decision to the Madison County Superintendent of Schools.

The hearing was held before Acting Superintendent Dorothy Donovan on August 21, 1989. On October 24, 1989, the Acting Superintendent issued "Findings of Fact, Conclusions of Law and

1 Order" finding that Phillips was "terminated unjustly because of
2 a personality conflict and not for the alleged financial reasons
3 stated." The School District has appealed the order to this
4 Superintendent.

5 Having reviewed the record, heard oral arguments of the
6 parties, and considered the briefs of the parties, this
7 Superintendent affirms the decision of Acting County
8 Superintendent Donovan.

9 **MEMORANDUM OPINION**

10 The standard of review by the state superintendent is set
11 forth in 10.6.125, ARM, which reads as follows:

12 (1) The state superintendent of public instruction
13 may use the standard of review as set forth below and
14 shall be confined to the record unless otherwise decided.

15 (2) In cases of alleged irregularities in procedure
16 before the county superintendent not shown on the record,
17 proof thereof may be taken by the state superintendent.

18 (3) Upon request, the state superintendent shall hear
19 oral arguments and receive written briefs.

20 (4) The state superintendent may not substitute her
21 judgment for that of the county superintendent as to the
22 weight of the evidence on questions of fact. The state
23 superintendent may affirm the decision of the county
24 superintendent or remand the case for further proceedings
25 or refuse to accept the appeal on the grounds that the
state superintendent fails to retain proper jurisdiction
on the matter. The state superintendent may reverse or
modify the decision if substantial rights of the appellant
have been prejudiced because the findings of fact,
conclusions of law and order are:

(a) in violation of constitutional or statutory
provisions;

(b) in excess of the statutory authority of the
agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable,
probative and substantial evidence on the whole record;

1 (f) arbitrary or capricious or characterized by abuse
2 of discretion or clearly unwarranted exercise of
3 discretion;

4 (g) because findings of fact upon issues essential to
5 the decision were not made although requested.

6 This rule was modeled upon section 2-4-704, MCA, and the
7 Montana Supreme Court has interpreted the statute and the rule to
8 mean that agency (County Superintendent) findings of fact are
9 subject to a clearly erroneous standard of review and that
10 conclusions of law are subject to an abuse of discretion standard
11 of review. Harris v. Bauer, 230 Mont. 207, 749 P.2d 1068, at
12 1071, 45 St. Rptr. 147, at 151, (1988); City of Billings v.
13 Billings Firefighters, 200 Mont. 421, at 430, 651 P.2d 627, at
14 632 (1982). Further, the petitioner for review bears the burden
15 of showing that they have been prejudiced by a clearly erroneous
16 ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714
17 P.2d 151, at 153 (1986), citing Carruthers v. Board of Horse
18 Racing, 216 Mont. 184, 700 P.2d 179, at 181, 42 St. Rptr. 729
19 (1985). Findings are binding on the court and not "clearly
20 erroneous" if supported by "substantial credible evidence in the
21 record." Id. This has been further clarified to mean that a
22 finding is clearly erroneous if a "review of the record leaves
23 the court with the definite and firm conviction that a mistake
24 has been committed." Wase Appeal v. Board of Personnel Appeals,
25 208 Mont. 33, 676 P.2d 194, at 198 (1984). A conclusion of
law is controlling if it is neither arbitrary nor capricious.
City of Billings, 651 P.2d at 632.

1 The School District has appealed the decision of the County
2 superintendent alleging error in her findings regarding the
3 financial condition of the district and the conflict between
4 Phillips and Superintendent Eaton. Extensive evidence was taken
5 by the County Superintendent as to the financial condition of the
6 district and the alleged continuing conflict between
7 Superintendent Eaton and Phillips.

8 This case really does come down to whether there was a
9 financial condition in the district which necessitated the
10 termination of Phillips or whether the termination was motivated
11 by the continuing conflict between Phillips and Eaton.

12 The credibility of witnesses and the weight of evidence is to
13 be decided by the trier of fact, the County Superintendent, who
14 had the opportunity to observe and judge the demeanor of the
15 witnesses. In addition, the administrative process set up by the
16 legislature recognizes the particular expertise of a county
17 superintendent in school matters. This Superintendent cannot
18 substitute her judgment for that of the fact finder.

19 The hearing officer had extensive financial information before
20 her. Her review of that information and the testimony of both
21 parties concerning the financial condition of the school district
22 caused her to conclude that although the sole reason given for
23 Phillips' termination was the financial condition of the district
24 (FF #5), this was a "pretext" or "guise" for the termination.
25 (FF #10, CL #2).

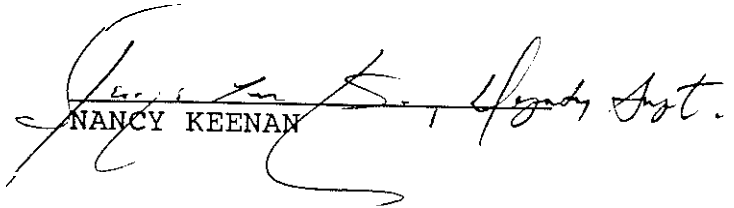
1 Unlike the "undeniable and overwhelming state of school
2 finances" and absence of any personal bias or unfair attitude in
3 the case of Michael Birrer v. Trustees, Wheatland County School
4 District No. 16, 241 Mont. 262, 47 St. Rptr. 247, 786 P.2d 1161
5 (1990), there is evidence in the instant case which disputes the
6 district's contention that there was a financial need to
7 terminate Phillips. In addition, there is evidence in the record
8 about a continuing conflict between Phillips and Superintendent
9 Eaton.

10 Budgetary figures from 1986 to 1990, including taxable
11 valuations, mills levied, amounts raised by the mill levies, and
12 reserves reflect the conditions and the options for the school
13 board. The County Superintendent did not find the actions of the
14 school board credible.

15 The record is also extensive as to testimony of a conflict
16 between Eaton and Phillips. The testimony of Phillips and Eaton
17 is conflicting. The County Superintendent obviously found
18 Phillips more credible than she did Eaton. There is no basis for
19 this Superintendent to reach a clearly erroneous finding.

20 All of the findings of fact of the County Superintendent are
21 supported by substantial credible evidence in the hearing record.
22 The County Superintendent's conclusion that the School District
23 did not have good cause to terminate Phillips is neither
24 arbitrary nor capricious.

DATED this 30th day of November, 1990.


NANCY KEENAN

CERTIFICATE OF SERVICE


THIS IS TO CERTIFY that on this 30th day of November, 1990,
a true and exact copy of the foregoing OPINION AND ORDER was
mailed, postage prepaid, to the following:

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